

Message Text

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DRAFTED BY:L/UNA: SCNELSON:JNP

APPROVED BY:IO-DR. MOREY

IO/SEC - MR. HENNES

NEA-MR. ATHERTON

IO/UNP

IO/CMD-MR. YODER

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(CORRECTED COPY) FIRST SENTENCE OF PARAGRAPH 5 OMITTED
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E.O. 11652: N.A.

TAGS: UN, ECOSOC

SUBJECT: 55TH ECOSOC-WEST ASIAN COMMISSION

REF: GENEVA 3738

1. THIS MESSAGE SETS FORTH DEPARTMENT'S COMMENTS ON DELE-
GATION'S LEGAL ARGUMENT TRANSMITTED REFTEL.

2. IN GENERAL, WE BELIEVE ARGUMENT BASED TOO HEAVILY ON
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SOMEWHAT STRAINED INTERPRETATIONS OF CHARTER ARTICLES WITH

INSUFFICIENT ATTENTION TO PRACTICE OF ECOSOC RE ESTABLISHMENT REGIONAL COMMISSIONS. IN OUR VIEW, THIS APPROACH TENDS TO DETRACT FROM SIMPLICITY AND PERSUASIVENESS OF BASIC ARGUMENT ON PRINCIPLE BY SETTING FORTH PROPOSITIONS WHICH ARE SUBJECT TO FAIRLY PERSUASIVE REBUTTAL. SPECIFIC COMMENTS ARE AS FOLLOWS:

3. PARA 2: WE WOULD LIMIT REFERENCE TO CHARTER TO ARTICLE 2(1) SINCE ARTICLE 2(2) DOES NOT APPEAR TO ADD MUCH. REFERENCE TO 1949 DRAFT DECLARATION SEEMS TO US TO BE OF DOUBTFUL VALUE SINCE IT TENDS TO DRAW ATTENTION TO LACK OF AUTHORITATIVE PRONOUNCEMENTS ON THIS ISSUE IN RECENT YEARS. FOR EXAMPLE, PERTINENT SECTION OF FRIENDLY RELATIONS DECLARATION DOES NOT DEAL WITH THIS ISSUE.

4. PARAS 3, 4 AND 6: THESE PARAS SEEM TO US TO BE SUBJECT TO WELL-FOUNDED OBJECTION THAT THEY PROVE TOO MUCH. IT IS CERTAINLY TRUE THAT MEMBER STATES HAVE OBLIGATIONS TO TAKE "JOINT ACTION" THROUGH UN ORGANIZATION AND TO "PARTICIPATE FULLY IN WORK OF THE UNITED NATIONS", AND THAT DENIAL OF RIGHT OF PARTICIPATION IN UN ACTIVITIES RAISES SERIOUS QUESTION OF LEGALITY OF ASSESSMENTS AGAINST MEMBER STATE. HOWEVER, THESE ARGUMENTS CANNOT BE USED IN SITUATION WHERE ECOSOC DECIDES IN ACCORDANCE WITH ARTICLE 68 TO ESTABLISH COMMISSION OF LIMITED MEMBERSHIP TO CARRY OUT PURPOSES OF ITS WORK. TO ARGUE THE CONTRARY WOULD APPEAR TO SUGGEST THAT EVERY UN MEMBER IN GOOD STANDING HAS RIGHT TO MEMBERSHIP IN EVERY ECOSOC COMMISSION OR OTHER LIMITED MEMBERSHIP GROUP ESTABLISHED IN ACCORDANCE WITH THE CHARTER TO CARRY OUT PURPOSES OF THE COMMISSION. RATHER, MAIN STRESS SHOULD BE ON POINT THAT MEMBERSHIP OF SUCH GROUPS MUST BE DETERMINED ON BASIS REASONABLY RELATED TO THE PURPOSES FOR WHICH IT IS ESTABLISHED. REGIONAL ECONOMIC COMMISSIONS ESTABLISHED BY ECOSOC ARE DESIGNED TO DEAL WITH THE ECONOMIC PROBLEMS PECULIAR TO A REGION. IT THEREFORE FOLLOWS, AND IS DEMONSTRATED BY THE CONSISTENT PRACTICE OF ECOSOC SINCE THE VERY BEGINNING, THAT A UN MEMBER STATE IN SUCH A REGION MAY NOT BE ARBITRARILY EXCLUDED FROM MEMBERSHIP ON SUCH A COMMISSION. WE BELIEVE IT IS IMPORTANT TO STRESS THE POSITIVE SIGNIFICANCE OF LIMITED OFFICIAL USE

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ECOSOC PRACTICE IN THIS RESPECT RATHER THAN SIMPLY OBJECTING THAT EXCLUSION OF A MEMBER STATE IN THE REGION WOULD BE "UNPRECEDENTED" AS PER PARA 7 REFTL.

5. PARA 5: ULTRA VIRES ARGUMENT WOULD BE APPROPRIATE IF WE WERE DEALING WITH QUESTION OF EXPULSION AS A SANCTION (WHICH IS MAIN SUBJECT COVERED BY SOHN ARTICLE REFERRED TO IN GENEVA 3722). HOWEVER, ISSUE HERE IS CONSTRAINT

ON ECOSOC'S CONSTITUTING NEW BODY FOR PURPOSES OF ARTICLE 68 OF CHARTER. WE DO NOT BELIEVE IT PARTICULARLY HELPFUL TO DISCUSS PROBLEM IN TERMS OF EXPULSION. NO ONE, SO FAR AS WE KNOW, HAS QUESTIONED PROPOSITION THAT THIS DECISION IS GOVERNED STRICTLY BY STANDARDS APPLICABLE TO ARTICLE 68. (RE YOUR REFERENCE TO ARTICLE 107, WE CONCUR WITH USUN 2615.)

6. WHILE ALL OF ARGUMENTATION CONTAINED REFTEL IS INGENIOUS, DEPARTMENT BELIEVES FOR FOREGOING REASONS THAT BEST LEGAL ARGUMENTATION FOR PURPOSES THIS DISCUSSION IS RELATIVELY SIMPLE, STRAIGHTFORWARD PROPOSITION BASED ON ARTICLE 2, PARA 1, OF CHARTER, PURPOSES OF ECOSOC REGIONAL COMMISSIONS, AND PRACTICE UNDER ARTICLE 68 UNDER WHICH, WITH A FEW DISTINGUISHABLE EXCEPTIONS, SOLE CRITERION HAS BEEN LOCATION IN OR OTHER RELATIONSHIP TO REGION IN QUESTION. RUSH

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